

## REMARKS

Claims 1-50 and 52-63 are presently pending in the case. Claim 54 has been amended to correct a typographical error.

Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

### **Allowable Claims**

Applicant acknowledges with appreciation the Examiner's indication that claims 52-60 are allowable and that dependent claims 19, 20, 22, 30-36, 40-42, 50, and 63 contain allowable subject matter. Claims 19, 20, 22, 30-36, 40-42, 50, and 63 have not been placed in independent form since they depend from an allowable claim, as discussed below.

### **Claim rejections under 35 USC 103(a)**

The Examiner rejected claims 1, 3-7, 11, 15, 16, 18, 21, 25-29, 38, 39, 45-49, 61, and 62 under 35 USC 103(a) as being unpatentable over U.S. Patent 5,740,794 to Smith et al (hereinafter Smith et al) in view of PCT Publication WO 99/44663 to McGinn et al (hereinafter McGinn et al). The rejection is traversed.

Smith et al does not render claim 1, for example, unpatentable. Claim 1 is to a method for conditioning a packaged powder, the method comprising, inter alia, providing at least one pulse of energy to the receptacle to increase the efficiency at which the powder may be extracted from the chamber and flowing a gas through the chamber to aerosolize the powder. Smith et al discloses the step of flowing a gas through the chamber to aerosolize the powder but does not disclose or suggest providing at least one pulse of energy to the receptacle to increase the efficiency at which the powder may be extracted from the chamber. Thus, Smith et al does not render claim 1 unpatentable.

McGinn et al also does not render claim 1 unpatentable. As discussed above, claim 1 is to a method for conditioning a packaged powder, the method comprising, inter alia, providing at least one pulse of energy to the receptacle to increase the efficiency at which the

powder may be extracted from the chamber and flowing a gas through the chamber to aerosolize the powder. McGinn et al discloses the application of a pulse of energy, but for the purpose of aerosolization. McGinn et al does not disclose providing a pulse of energy to increase aerosolization efficiency *and* flowing a gas through the chamber to aerosolize the powder. Thus, McGinn et al also fails to render claim 1 unpatentable.

Claim 1 is also not rendered unpatentable by the combination of Smith et al and McGinn et al. Smith et al and McGinn et al disclose two different types of aerosolization mechanisms. Neither teaches a system such as that claimed where a pulse of energy is provided to increase the efficiency at which the powder may be extracted from the chamber and flowing a gas through the chamber to aerosolize the powder. If one of ordinary skill in the art were to incorporate the teachings of McGinn et al with the disclosure of Smith et al, the resulting system would not be one that provides a pulse of energy to the receptacle to increase the efficiency at which the powder may be extracted from the chamber and that flows a gas through the chamber to aerosolize the powder. One of ordinary skill in the art at the time the invention was made would have had no motivation to combine the teachings of Smith et al and McGinn et al in a manner that would arrive at the presently claimed invention. Accordingly, Smith et al and McGinn et al do not render claim 1 and the claims depending therefrom unpatentable, either alone or in combination.

Smith et al and McGinn et al do not render claim 15 unpatentable, either. Claim 15 is to a powder conditioning system comprising, inter alia, a receptacle, a mechanism to provide at least one pulse of energy to the receptacle, and an aerosolization mechanism to aerosolize powder in the receptacle by flowing gas through the chamber. As discussed above, Smith et al and McGinn et al do not teach both a mechanism to provide a pulse of energy *and* an aerosolization mechanism. Therefore, Smith et al and McGinn et al do not render claim 15 and its depending claims unpatentable.

Additionally, Smith et al and McGinn et al do not render claim 61 unpatentable. Claim 61 is to a method for aerosolizing a powder comprising, inter alia, placing a receptacle into an aerosolization device having an aerosolization system for extracting the powder from the receptacle by flowing gas through a chamber and a mechanism to provide at least one pulse of energy to the receptacle. Smith et al and McGinn et al do not teach a system for extracting a powder by flowing gas through a chamber and a mechanism to provide a pulse of energy to a

receptacle, as discussed above. Accordingly, Smith et al and McGinn et al do not render claim 61 or its depending claims unpatentable.

The Examiner rejected claims 1, 8-11, 13-15, 23, 24, 26, 27, 37, 43-45, and 61 under 35 USC 103(a) as being unpatentable over Smith et al in view of US Patent 5,694,920 to Abrams et al (hereinafter Abrams et al). The rejection is traversed.

Smith et al and Abrams et al do not render claim 1 unpatentable. Claim 1 is to a method for conditioning a packaged powder, the method comprising, inter alia, providing at least one pulse of energy to the receptacle to increase the efficiency at which the powder may be extracted from the chamber and flowing a gas through the chamber to aerosolize the powder. Smith et al does not teach the method of claim 1, as discussed above. Additionally, Abrams does not teach the method of claim 1. Abrams discloses vibrating a powder for deaggregation of the powder. However, Abrams does not disclose providing a pulse of energy and flowing a gas through the chamber to aerosolize the powder. Instead, Abrams aerosolizes the powder using electrostatic charge. If one of ordinary skill in the art at the time the invention were to modify the Smith et al device in accordance with the teachings of Abrams et al, then a vibration/electrostatic aerosolization mechanism would be used instead of the air flow aerosolization of claim 1. One of ordinary skill in the art would not have been motivated, based on the teachings of Smith et al as a whole and Abrams et al as a whole, to arrive at the invention recited in present claim 1. Accordingly, claim 1 and its dependent claims are not rendered unpatentable by Smith et al and Abrams et al.

Smith et al and Abrams et al also do not render claim 15 unpatentable. Claim 15 is to a powder conditioning system comprising, inter alia, a receptacle, a mechanism to provide at least one pulse of energy to the receptacle and an aerosolization mechanism to aerosolize powder in the receptacle by flowing gas through the chamber. Smith et al and Abrams et al do not disclose a mechanism to provide a pulse of energy and an aerosolization mechanism that aerosolizes by flowing gas through the chamber. Therefore, Smith et al and Abrams et al do not render claim 15 and its depending claims unpatentable.

Additionally, Smith et al and Abrams et al do not render claim 37 unpatentable. Claim 37 is to a powder dispersion device comprising, inter alia, an aerosolization system in the housing to extract the powder from the receptacle and to entrain the powder in a gas stream to form an aerosol by flowing gas through a chamber and a mechanism to provide at least one pulse

of energy to the receptacle prior to aerosolization to increase the efficiency at which the powder may be extracted from the chamber when flowing a gas through the chamber. As discussed above, neither Smith et al nor Abrams et al disclose an aerosolization system in the housing to extract the powder from the receptacle and to entrain the powder in a gas stream to form an aerosol by flowing gas through a chamber and a mechanism to provide at least one pulse of energy to the receptacle prior to aerosolization to increase the efficiency at which the powder may be extracted from the chamber when flowing a gas through the chamber. Therefore, Smith et al and Abrams et al do not render claim 37 and its depending claims unpatentable.

The Examiner also rejected claim 2 under 35 USC 103(a) as being unpatentable over Smith et al and McGinn et al further in view of U.S. Patent 6,167,880 to Gorda et al (hereinafter Gorda et al). The rejection is traversed. The proposed modifications do not make up for the deficiencies of Smith et al and McGinn et al discussed above. Accordingly, claim 2 is not rendered unpatentable by Smith et al, McGinn et al and Gorda et al.

The Examiner also rejected claim 12 under 35 USC 103(a) as being unpatentable over Smith et al and McGinn et al further in view of Abrams et al. The rejection is traversed. The proposed modifications do not make up for the deficiencies of Smith et al, McGinn et al and Abrams et al discussed above. Accordingly, claim 12 is not rendered unpatentable by Smith et al, McGinn et al and Abrams et al.

**Conclusion**

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

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